

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4925 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

FAROOK CHHAPARO CHHOTUMIYA SHAIKH: Petitioner.

Versus

COMMISSIONER OF POLICE:Opponent.

Appearance:

MS DR KACHHAVAH for Petitioner
Mr. S.P. Dave, APP for Respondents No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 18/11/97

ORAL JUDGEMENT

By this application under Article 226 of the Constitution of India, the petitioner calls in question the legality and validity of the detention order passed by the Police Commissioner of Baroda city on 5th May 1997 invoking the powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the Act').

2. In order to appreciate the rival contentions, few

facts may be stated. Against the petitioner, about 3 complaints came to be lodged before the police station in the city of Baroda. With the Karelibaug police station, a complaint of the offence under Section 392 was lodged, while another complaint, in Sayajiganj police station of the offence under Section 323, 325, 506(2) read with Section 114 and Section 135, Bombay Police Act came to be lodged, and the third complaint which came to be lodged with Karelibaug police station was about the offence punishable under Section 392, IPC. After coming to know about such complaints when the Commissioner of Police deeply inquired he found that the petitioner was the head-strong person and was by his nefarious activities creating panic in the society challenging the maintenance of public order. The petitioner used to extort money by giving threats or resorting to coercive measures, and those who did not yield to his desire they were assaulted & beaten brutally and were then made to succumb to his desire. The people considering their safety were not coming forth to lodge complaint and have the action in accordance with law. Hearing about the petitioner or seeing him the people used to chevay, as they were feeling insecured. The Police Commissioner then found that to curb the anti-social activities of the petitioner there was no way out but to detain him as under general law it was difficult to control his activities taking appropriate action. He therefore passed the order in question on 5th May 1997. Consequent upon the same the petitioner came to be arrested.

3. The petitioner has challenged the legality and validity of the order on different grounds. According to him, there is no justification to describe him as a head-strong person or a dangerous person. Necessary bail papers were not given to him for making effective representation though the co-accused were released on bail. After he was released on bail by the court, the detention order was passed, and it was only with a view to see that he was put behind bars any how. The order passed is therefore malafide. Further, assailing the order it is submitted that the particulars about the witnesses giving the statement against him ought to have been furnished to him so as to make effective representation. There was no justification to suppress the same, because for the same the requirements of Section 9(2) of the Act were not satisfied. He thus assail on the ground of non-supply of better particulars also.

4. It would be better if the law about the non-disclosure of certain facts is elucidated. Reading

Article 22(5) of the Constitution of India, what becomes clear is that the grounds on which order of detention has been made are required to be communicated to the detenu and further an opportunity of making the representation against the order of detention is required to be given. The detenu is therefore required to be informed not merely factual inference and factual material which led to inference namely not to disclose the certain facts but also the sources from which the factual material is gathered. The disclosure of sources would enable the detenu to draw the attention of the detaining authority in the course of his representation to the fact whether the factual material collected from such sources would be relied upon and used against him on the facts and circumstances of the case. Subject to the limitation mentioned in Article 22(6) of the Constitution of India and Section 9(2) of the Act the detaining authority is empowered to withhold such facts and particulars the disclosure of which he considers to be against the public interest. The privilege of non-disclosure has been exercised sparingly and in those cases where public interest dictating non-disclosure overrides the public interest requiring disclosure. Hence the detaining authority must be fully satisfied on the basis of overall study that the apprehension expressed by the informant is honest, genuine and reasonable in the circumstances of the case. With a view to satisfy itself whether the fear of violence and consequential feelings of insecurity or apprehension of a wrong would be done to them at any time by the detenu by those making statement against the detenu is imaginary or fanciful; or an empty excuse or well-founded for disclosing or not disclosing certain facts or particulars of those persons the authority making the order has to make necessary inquiry personally. What can be deduced from such constitutional as well as legal scheme whereunder obligation to furnish the grounds and the duty to consider whether the disclosure of any facts involved therein is against public interest are both vested in the detaining authority and not in any other. The authority passing the order of detention has to apply his mind and should itself be satisfied to the question whether or not the supply of the relevant particulars and materials would be injurious to the public interest. If he mechanically endorses or accepts the recommendation of an outside or inferior authority in that behalf the exercise of power would be vitiated as arbitrary. What is further required is that the detaining authority must file his affidavit to satisfy the court that he had sincerely and honestly applied the mind for the bonafide exercise of the powers about disclosure and privilege regarding non-disclosure

so that the court can examine rational connection between the ground disclosed or not disclosed in public interest. If no affidavit explaining the exercise of the power is filed, the court can infer against the detaining authority. If the affidavit is filed explaining the exercise of the power the other side may challenge the privilege exercised on the ground that the same is vitiated by factual or legal malafides. For my such view, a reference to a decision in the case of Bai Amina, w/o. Ibrahim Abdul Rahim Alla v. State of Gujarat and others - 22 G.L.R. 1186 held to be the good law by the Full Bench of this court in the case of Chandrakant N. Patel v. State of Gujarat & Others - 35 (1) [1994(1)] G.L.R. 761, may be made.

5. In view of such law made clear hereinabove, the order is not passed. Reading the contents of the order at Page 13 it becomes abundantly clear that the Commissioner of Police did not try to satisfy himself by making necessary personal enquiry. He entrusted the work for being satisfied to Assistant Police Commissioner 'C' Division, Baroda, and mechanically it seems relied upon the report made by the Assistant Police Commissioner which is not at all in consonance with law made clear hereinabove. When that is the case, the order passed is vitiated as arbitrary and the same is required to be quashed. It has been contended on behalf of the respondents that the Police Commissioner has in his affidavit filed at page 18 explained about his being satisfied about the case for non-disclosure of necessary particulars about the witnesses. The contention does not seem to be well-founded because reading para 8 of the affidavit, it appears clearly that the Police Commissioner did not personally verify and enquire about the apprehension expressed by the witnesses. He had instructed the Assistant Commissioner of Police to inquire into the matter and report, and it seems he mechanically accepting the report made by the Assistant Commissioner of Police concluded for invoking his powers under Section 9(2) of the Act which is, for the reasons stated hereinabove, not in consonance with law. The contention, that without any justification the facts or particulars were withheld seriously marring the right to make effective representation has to be accepted.

6. With the result, the petition is allowed and the order detaining the petitioner is held unconstitutional & illegal. It is therefore quashed. The petitioner be released forthwith if no longer required in any other case. Rule accordingly made absolute.

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